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Attorney for Applicant

PATENT
Docket No. SJO920000065US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Vladimir Nikitin et al.)
Serial No.: 10/087,332)
Filed: March 1, 2002) Group Art
For: **REDUCTION OF INTERFERENCE PICKUP IN**) Unit: 2652
HEADS FOR MAGNETIC RECORDING BY)
MINIMIZING PARASITIC CAPACITANCE)
Examiner: Davis, Donald D.)

APPELLANTS' REQUEST FOR REINSTATEMENT / MAINTAINING OF THE

APPEAL

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The USPTO received Appellants' timely Appeal Brief on February 22, 2005 and Notice of Appeal on June 25, 2004. The Notice of Appeal was filed in response to the Final Office Action mailed March 24, 2004. In response to the Appeal Brief, the Examiner reopened prosecution and issued a Final Office Action mailed May 18, 2005. The Final Office Action included a new ground of rejection, but was not necessitated by an amendment or based on an information disclosure statement. Based on the Final Office Action and the Examiner's reliance on 37 C.F.R. §1.193(b)(2), Appellants considered the reopened prosecution and Final Office

Action a written statement in answer to Appellant's brief (an Examiner's answer) under 37 C.F.R. §1.193(b)(2) and 37 C.F.R. §41.39. Therefore, Appellant filed a supplemental appeal brief in compliance with 37 CFR 41.39(b)(2) on June 30, 2005. Appellants contended that reopening prosecution is an unnecessary waste of time and money, and that making the first action final based on a new ground of rejection is improper. Appellants reiterated all of the applicable arguments presented in Appellants Appeal Brief of February 22, 2005.

In response to a status request filed March 23, 2006, Appellants received a notice of non-compliant appeal brief because the supplemental appeal brief was inadvertently filed without a signature and because the new rule changes required filing of a new appeal brief and new notice of appeal. Consequently, Appellants filed a new appeal brief with an accompanying notice of appeal.

The USPTO received Appellants' timely Appeal Brief and Notice of Appeal on November 17, 2006. In response, the Examiner issued an Office Action mailed February 22, 2007. The Office Action did not state that the Examiner was reopening prosecution; therefore, Appellants presume that the Office Action was intended as an Examiner's Answer to the Appeal Brief filed on November 17, 2006 under 37 C.F.R. §1.193(b)(2) and 37 C.F.R. §41.39. Appellants' again submit that reopening prosecution is an unnecessary waste of time and money.

The Examiner's Answer again included a new ground of rejection based on a newly cited piece of art, in spite of the direction in the MPEP that "New grounds of rejection in an examiner's answer are envisioned to be rare, rather than a routine occurrence." (MPEP 1207.03). Consequently, Appellants are filing this new Appeal Brief, reiterating applicable arguments of previous Appeal Briefs and addressing new grounds of rejection below in Section 7 as set forth in 37 C.F.R. §41.37(c)(1)(vii). The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or to credit any overpayment, to Deposit Account No. 09-0466.

Respectfully submitted,

Date: April 23, 2007

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